IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2594 of 2004
with
CIVIL APPLICATION No. 8693 of 2004

Date of Decision: 28-9-2005

==========

NEW INDIA ASSURANCE CO.LTD. - Appellant(s)
Versus
ABDULSALAM ABDULSATTAR KAZI & 2 - Defendant(s)
(for full cause title, see next sheet)

==========

Coram:

The Hon'ble Mr.Justice Bhawani Singh, Chief Justice

The Hon'ble Mr.Justice H.K.Rathod, Judge

Whether approved for reporting?

For the Appellant(s):
Shri Sunil B. Parikh, Adv.

For the Respondent(s)-1 & 2:
Shri Kiran C.Mehta, Adv.

==========

PER: BHAWANI SINGH, CHIEF JUSTICE (ORAL):-

1. Through this Appeal, judgment of Motor Accident Claims Tribunal (Fast Track Court),

==========

Whether reporters of Local Papers may be allowed to see the Judgment?

Ahmedabad Rural at Navrangpura, Ahmedabad, in MACP No.155 of 1994 dated 26.7.2004, is challenged.

2. Shortly stated, legal heirs of Himayatbhai Abdulsalam Kazi (deceased) claimed compensation of Rs.3,00,000/-. Deceased died in the motor accident on 15.9.1993. He was going on his cycle from Juhapura to Vasna at low speed on left side when driver of Ambulance Van No.GJ-13-G-9504 driven rashly and negligently without applying horn dashed against back side of deceased who sustained injuries and died on the spot. Deceased was making ornaments of gold and silver at his brother's firm earning Rs.3,000/- as per deposition of Ashrafhusain H.Mankawala, owner of the firm. He was 19 year old at the time of accident. Claim is mainly objected by New India Assurance Company Limited. It is denied

that vehicle was being driven rashly and negligently by its driver, therefore, claim is sought to be dismissed. Other opponents have not filed written statement. After evidence and hearing the parties, Tribunal came to the conclusion that the deceased died due to the rash and negligent driving of the vehicle by its driver, therefore, claimants are entitled to compensation of Rs.2,82,000/- with interest at the rate of 9% p.a. from the date of application till payment. Aggrieved by and dissatisfied with the judgment, the appellant has filed this Appeal.

3. Learned counsel for both sides are heard, record perused. So far as taking place of accident is concerned, there is evidence to prove that driver of Van was responsible for causing the accident. Driver of Van has not appeared to oppose the statement of claimant.

Therefore, in the light of available evidence, it can be said that the finding of Claims Tribunal with regard to responsibility for the accident is based on evidence, therefore confirmed.

4. Real question pertains to assessment of compensation. Learned counsel for the appellant submitted that compensation awarded is excessive. It deserves to be reduced since neither assessment is in accordance with principles laid down by this Court nor justified when unmarried stage of deceased and ages of parents are taken into consideration. Learned counsel for the claimants submits that the deceased was the only son of the parents. He was a skilled worker of gold and silver ornaments, at his brother's firm. He had every potential to earn more in future. Therefore, compensation has been justly awarded.

5. Giving consideration to the submissions advanced by learned counsel for the parties, we find that the compensation needs to be re-assessed properly in the light of decisions of this Court and the evidence on record. Deceased was a young man of 19. At this age, he was engaged in the making of gold and silver ornaments in his brother's firm. When he could make ornaments at this age and earn Rs.3,000/- per month, he had potential to earn more in future. Therefore, evidence that he was earning Rs.3,000/- per month should be accepted. That being so, applying principle laid down by this Court in *Ritaben alias Vanitaben and another v. Ahmedabad Municipal Transport Service and another* (2000 ACJ 153) on the basis of Apex Court decision in *Smt.Sarla Dixit and another v. Balwant Yadav and others* (AIR 1996 SC 1274), compensation is

assessed thus:

Rs.3000 x 3 = Rs.9000, 1/2 of Rs.9000 = Rs.4500 - 2/3 = Rs.1500 x 12 = Rs.18000 x 12 = Rs.216000 + Rs.10000 (loss of expectancy of life) + Rs.2000 (funeral expenses) = Rs.2,28,000/-.

Therefore, Appeal is partly allowed, award modified. Claimants are held entitled to compensation of Rs.2,28,000/- with interest at the rate of 9% p.a. from the date of application till payment. Compensation be paid to the claimants and excess deposited, be refunded to the Insurance Company. Cost of this Appeal shall be borne by the parties. Civil Application stands disposed of.

(Bhawani Singh)
Chief Justice

(H.K.Rathod)
Judge

(sunil)